TAY CHOON ENG (f) v. THE CITY COUNCIL

[O. C. J. (Murray-Aynsley C.J.) June 23, 1955]

[Singapore — Suit No. 194 of 1955]

Municipal Ordinance (Cap. 133), ss. 144B and 367 — Mandatory order obtained for demolition of building — Notice to "occupier" — Whether proviso to s. 367 complied with.

The plaintiff in this case occupied a building as tenant of one Madam Jeenabai. The building in question was affected by s. 144B of the Municipal Ordinance and proceedings having been taken against Madam Jeenabai, it was demolished by the officers of the defendant Council. The defendants pasted a notice of their intention on the premises more than 6 hours before the demolition, but this notice was addressed to Madam Jeenabai.

The evidence showed that the actual owner of the building for the purposes of the Municipal Ordinance was the husband of Madam Jeenabai.

Held: (1) by the terms of s. 144B, proceedings must be taken against the "owner"; (2) in this case the notice addressed to Madam Jeenabai could not be considered as a notice to the occupier, and therefore the provisions of the proviso to s. 367 were not complied with.

ACTION FOR TORT.

L. A. J. Smith for the plaintiff.

J. E. Lloyd for the defendants.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — In this case a building occupied by the plaintiff as tenant of a certain lady described in the proceedings as Madam Jeenabai (spelt in various ways) was demolished by officers of the defendant Council.

This is a tort unless the Council can justify their action. It appears that the defendants had obtained a mandatory order for the demolition of the building in the following circumstances. The building seems to have been one affected by section 144B and proceedings were taken against Madam Jeenabai. This appears to have been incorrect because the evidence shows that the owner for the purposes of the Municipal Ordinance is the husband of the lady, a Mr. H. A. Jivabhai. By the terms of section 144B proceedings must be taken against the "owner".

Further the provisions of the proviso to section 367 were not complied with. It appears that the building was a dwelling house in actual occupation. The defendants pasted a notice of their intention on the premises more than six hours before the demolition, but this notice was addressed to Madam Jeenabai. I do not see how a notice addressed only to Madam Jeenabai can be considered a notice to the occupier. In the circumstances a tort has been committed by the defendants. I do not think this is a case for heavy damages. I award $100 general damages. There can be an enquiry by the Registrar as to special damages. The plaintiff is entitled to the costs of the action.

Claim allowed.

Solicitors : *Donaldson & Burkinshaw; Drew & Napier.*

YII KIM HAI & ORS. v. REGINA

[C. A. (Williams C.J., Rogers and Blagden JJ.) June 15, 1955]

[Kuching — Criminal Appeal No. 2 of 1955]

Sarawak — Criminal Procedure Code (Cap. 62), ss. 115, 116 and 117 — Statements made to Police Officers — Admissibility — Proof that the statement is free and voluntary — Application of proviso to s. 4(1) of Criminal Appeal Act, 1907 — Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951.

This matter was brought to the Court of Appeal of Sarawak, North Borneo and Brunei by virtue of a certificate of Bodley J. under s. 291A of the Criminal Procedure Code. The question for determination of the Court of Appeal was whether statements made by the appellants to Police Officeras under s. 117(5) of the Criminal Procedure Code had been correctly admitted by the District Court at Sarikei.

Ss. 115, 116 and 117 of the Sarawak Criminal Procedure Code read as follows: "115. — (1) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person being within the limits of the police district in which he is making an investigation who from the information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required. (2) If any such person refuses to attend as so required such police officer may report such refusal to a Magistrate who may thereupon in his discretion issue a summons or warrant to secure the attendance of such person as required by such order aforesaid.

"116. — (1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined. (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer but may refuse to answer any questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

"117. — (1) No statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be signed by the person making it, nor shall such statement, save as herein provided, be used as evidence. . . . . (5) The provisions of subsection (1) shall not apply to any statement made to any police officer who at the time when such statement is made is authorised by virtue of any special or general direction of the Governor to receive and record statements in the course of a police investigation and any such statement shall be admissible in evidence in like manner and circumstances and to the like extent as if the law in relation thereto were the law from time to time in force in England. (6) A statement shall be deemed to be made to a police officer within the meaning of subsection (5) notwithstanding that such officer is unable accurately to record the same in the language in which it was made and that with the assistance of an interpreter the same was recorded by such officer in a language different from that in which it was made. . . . . "

S. 117(5) of the Code was added by Ordinance No. 30 of 1953 and gives power to admit in evidence statements recorded by certain authorised police officers. The statements which were admitted in this case were recorded by authorised police officers. At the time the statements were made some of the appellants were in the custody of the police, and the 1st appellant who was on bail had been summoned to the Police Station for his statement to be taken. At the trial, the officers who took the statements gave evidence and said that before recording the statements they administered a warning to the appellants and that they then made the statements voluntarily. The learned District Judge who tried the case, did not ask the appellants whether they had any objections to the admission of the statements. An examination of the statements showed that some questions were put to the appellants during the taking of the statements.

Held: (1) as the appellants in this case were invited to make the statements and as some questions must have been put to the appellants during the taking of the statements, it would appear that the statements were in fact taken under the powers given by s. 116 of the Criminal Procedure Code and were therefore inadmissible; (2) assuming that the statements were taken under s. 117(5) of the Code, they were taken contrary to the practice in England where the Judges have refused to allow the answer to any question put to a person in custody to be given in evidence; (3) in the case of the 1st, 2nd and 3rd appellants, the Court was of opinion that the District Judge would inevitably have come to the same conclusion if the statements had not been admitted, and therefore, applying the proviso to s. 4 of the Criminal Appeal Act, 1907, which was applicable to Sarawak, their appeals must be dismissed; (4) in the case of the 8th appellant, his conviction could not be sustained, in the absence of the statement, and therefore his appeal was allowed.

Held also: if the prosecution wish to put in evidence a statement made by an accused person as a statement under s. 117(5) the affirmative proof that it is free and voluntary must be of the highest possible standard — higher indeed than would be required in similar circumstances under English law which is unfettered by any such provisions as the Sarawak Criminal Procedure Code, s. 116.

Case referred to:—

(1) *Regina v. Thompson* (1893) 2 Q.B. 12.

COURT OF APPEAL.

L. A. J. Smith for the 1st, 2nd, 3rd and 8th appellants.

Peter Mooney (Crown Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Williams C.J.: — This matter comes before the Court by virtue of a certificate signed and filed by Bodley J. under section 291A of the Criminal Procedure Code. The question to be determined by the Court of Appeal is whether statements made by the appellants to Police Officers under section 117(5) of the Criminal Procedure Code had been correctly admitted by the District Court at Sarikei. Originally eight men in all were tried in the District Court on two charges i.e.:—

1. Manufacturing prepared opium under section 9 (1) (c) of the Dangerous Drugs Ordinance, 1952;

2. Being in possession of prepared opium under section 9 (1) (b) of the Dangerous Drugs Ordinance, 1952.

The first defendant was convicted on both charges, and the other seven were convicted on the first charge only. The first, second, third and eighth were sentenced to various terms of imprisonment and fines. The fourth, fifth, sixth and seventh were sentenced only to pay fines. All eight appealed, and on appeal the convictions against the fourth, fifth, sixth and seventh were quashed. The convictions of the other four appellants were upheld but the sentences reduced. The evidence called by the prosecution in the District Court consisted of the finding of the exhibits in the case by a Police party, together with the identification of the defendants. There was also produced a copy of the analyst's report.

There were also submitted statements made by each of the defendants after being taken into custody. These statements were admitted without any objection on the part of the defence. The statement of the eighth defendant — Exhibit Z_4 — was taken by Asst. Supt. Abang Othman bin Haji Moasli on the evening of the 12th December, 1954. The statements of the other seven — Exhibits Z_5 — Z_{11} —were taken by Inspector Ong Cheng Soon of the Special Branch, some on the 12th December and some on the 13th December, and in addition a further statement — Exhibit Z_{12} — was taken from the first defendant by Asst. Supt. Forrer on the 14th December. All these Police officers were authorised under section 117(5) to receive and record statements in the course of a Police investigation.

The four present appellants were first brought before the Magistrate on the 13th December but the record does not state at what hour. At that time the first charge (of manufacturing prepared opium) was on the record but they were not formally charged. The Magistrate noted that he explained to them the reasons why they were before the Court and that they stated they understood the explanation. At the request of the prosecution for an adjournment to obtain the fiat of the Public Prosecutor they were remanded until the 24th December but were admitted to bail. On the 24th December they appeared in Court and further remands were granted until the 17th January, 1955, when a second count was added against all the accused persons of being in possession of prepared opium and certain minor alterations were made to the first count. The Magistrate then for the first time formally charged them and all claimed trial.

At the appeal before this Court Mr. L. A. J. Smith appeared for all four appellants, whom for convenience we will continue to refer to as the first, second, third and eighth appellants, and Mr. P. Mooney, Crown Counsel, appeared for the Crown.

Mr. Smith raised a point which he had previously argued before Bodley J. namely that there was a breach of section 175(1) of the Criminal Procedure Code in that when the appellants appeared for the first time before the Magistrate on the 13th December the first charge was not read and explained to them. The section requires that not only should this be done but also that an accused should be asked whether he was guilty of the offence charged or claimed to be tried. But this section clearly has reference only to the procedure to be followed at the actual trial, and at that time not much more than twenty-four hours after the arrest of the appellants, the prosecution had not even had sufficient time to obtain from Kuching the fiat of the Public Prosecutor or to secure an analysis of the materials seized, and clearly had no alternative but to ask for a remand. Equally the Magistrate had no alternative in the interests of justice but to grant it.

In our opinion, section 175(1) was properly complied with on the 17th January, when the charges were read to the appellants and their pleas taken. Bodley J. says in his judgment: "It is, however, abundantly clear that both counts were read to the appellants and that both counts were both so simple that little or no explanation of them was necessary. All the appellants knew exactly the nature of the charges they had to meet ....." The lack of any further explanation of the charges did not occasion any failure of justice and was certainly curable under section 371 of the Criminal Procedure Code, and curable here before us by the proviso to section 4(1) of the Criminal Appeal Act, 1907, which is applicable in Sarawak by virtue of the provisions of section 18(2) of the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951.

The real and substantial point on the appeal is, as stated on the certificate by Bodley J. dated the 25th April addressed to the Registrar, whether the statements made by the appellants to the Police officers were correctly admitted in evidence under section 117(5) of the Criminal Procedure Code. The statements as taken in point of time were as follows. On the 12th December at 9.15 p.m. the eighth appellant made a statement recorded by Asst. Supt. Abang Othman. On the following morning at 7.15 a statement was taken from the second appellant by Inspector Ong Cheng Soon; the third appellant's was taken at 7.30 by the same Inspector. The first appellant's statement was recorded at 2.30 that afternoon by the same Inspector. On the 14th December at 11 a.m. Asst. Supt. Forrer took a further statement from the first appellant which was ruled inadmissible by Bodley J. because the interpreter present at the taking had not been called at the trial. We are therefore not concerned with this statement. Assuming that the appellants appeared before the Magistrate at 9 a.m. on the 13th December it follows that the eighth, second and third appellants made their statements prior to appearing in Court and whilst still in custody of the Police, and the first appellant made his statement when on bail later. His counsel informed us that his instructions were that this appellant had been sent for by the Police.

The record of the statements appear in the same form. It is headed Sarawak Constabulary, Statement, then follow particulars of the name of the maker, his age, dialect, address, occupation, and the name of the recording officer, with date and time.

Then follows this sentence: Witness states "I have been warned that I am not obliged to say anything, but anything I do say will be taken down in writing and may be given in evidence." Then follow the signatures of the maker and of the Police officer. Thereafter appears the text of the statement.

Mr. Smith submitted that these statements, alleged to have been taken and admitted under section 117(5) of the Criminal Procedure Code, were really taken by the Police pursuant to their powers under sections 115 and 116 of the Code: that as English law contains nothing akin to these sections it cannot he invoked to warrant their admissibility in the Courts of Sarawak: any admission obtained pursuant to section 116 where a person is required to answer truly all questions put to him by the Police officer at a Police investigation cannot be accepted by the Court under section 117(5) as a statement freely and voluntarily made.

Mr. Mooney contends that these statements taken under section 117(5) were not connected in any way with the examination of a person by the Police under section 116 but were statements made in accordance with English law i.e. they were proved effectively to have been freely and voluntarily made and were not the result of any threat or inducement.

The trial Magistrate admitted the statements as being freely and voluntarily made. Bodley J. stated that he was quite satisfied that they were not made as a result of any questioning by the Police.

It is obvious that the appellants and the other accused were sent for and brought before the authorised Police officers. At the time they made the statements the second, third and eighth appellants would appear to have been under arrest: we are informed also that the first appellant had been summoned to the Police Station, and admittedly the Police at the time the statements were taken were conducting an investigation.

Apart from the record of the caution it is not evident for what reason each appellant began to make his statement. It does not appear that any appellant expressed a desire to volunteer a statement. Clearly the authorised officers sent for the appellants in order to obtain further information on the matter. To say the least, the appellants must have been invited to make statements — the manner of such invitation is not in evidence. At the trial Inspector Ong says "I cautioned them and explained to them before they made the statements. They all made statements voluntarily. I read them back in Hokkien before they signed them. Then they signed and I countersigned." With regard to the eighth appellant, the evidence of Asst. Supt. Abang Othman is this: "Before taking any statement I administered a warning to him. He made the statement quite voluntarily. I produce the statement." That and the statements prefaced by the signed cautions are the only record of evidence. The Magistrate did not ask the appellants whether they had any objection to their admission. He admitted them there and then and he had their statements interpreted to them in Court. Each statement is of some length and in some detail. From examination of them it is clear that at some stage of the taking of the statements some questions must have been put. It cannot be a mere coincidence that the third last sentence of the second appellant's statement is "I do not know that the black stuffs were opium" and the second last sentence of the third appellant's statement is "I did not know that the black stuffs were opium." The inference is irresistible, particularly in the case of the second appellant that a question was put "did you know that the black stuff was opium" because a few sentences before he had said "I did not know what the black stuffs were."

Accordingly we hold contrary to the view of Bodley J. that some questions must have been put during the taking of the statements. We are of the opinion that they were taken either under the powers given by section 116, or if not, then contrary to English law and practice where it has been the practice of Judges for many years not to allow the answer to any question put to a person *in custody* to be given in evidence. In either case they are inadmissible in evidence and ought not to have been admitted by the Magistrate and the Court so holds.

At this point we think it advisable to give our interpretation of section 117(5) in its relation to the preceding sections 115 and 116. All section 117(5) has achieved is to give to certain authorised Police officers the power to dispense with the provisions of section 117(1) in respect of statements recorded in the course of a Police investigation made under Chapter XIII of the Criminal Procedure Code, and to produce these statements as evidence as if the law in relation to the admissibility of such statements in evidence were the law as in England. The sub-section in no way supersedes the other sections under Chapter XIII with regard to the taking of statements as distinct from the admissibility of them as evidence. So far as the Criminal Procedure Code goes, the authorised officers no less than their unauthorised brethren still derive their authority to investigate from Chapter XIII and from no other source. Moreover, the Dangerous Drugs Ordinance under which this prosecution is brought, so far as this point is concerned, extends their powers no further. Now the law of England as regards admissibility of statements in the nature of extrajudicial confessions is contained in the well-known judgment of Cave J. in the case of *Regina v. Thompson*[1]. At page 15 he uses the words "By that law, to be admissible, a confession must be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear excited by a person in authority, it is inadmissible. On this point the authorities are unanimous." He then goes on to quote from the Law of Evidence of those days: "The material question consequently is whether the confession has been obtained by the influence of hope or fear; and the evidence to this point being in its nature preliminary is addressed to the Judge, who will require the prosecutor to show affirmatively, to his satisfaction, that the statement was not made under the influence of an improper inducement, and who, in the event of any doubt subsisting on this head, will reject the confession."

Being as it is the well established English law on the subject, this is what must now be applied in Sarawak to confessions which it is sought to admit under section 117(5). It would be idle to pretend that confessions obtained by Police officers, authorised or otherwise, under their statutory powers as set out in sections 115 and 116 of the Criminal Procedure Code could come within its ambit. Those powers enable them to demand the presence of a person for interrogation [section 115(1)], with the threat of a summons or warrant if he fails to appear [section 115(2)]. They may examine orally any person supposed to be acquainted with the facts and circumstances of a case [section 116(1)] and that person must answer all questions truthfully save incriminating ones [section 116(2)]. All these things may be lawfully done, but by no stretch of the imagination, could it be maintained that the resulting statements or confessions,

when made by persons already in custody, do satisfy the English law as laid down in *Regina v. Thompson*[1], *supra.*

What sort of statement can then be admitted under the provisions of section 117(5)? In the first place, obviously a volunteered statement can be admitted provided the volunteer is apprised in time by proper caution of his right to decline to make a statement. In the second place, a free and voluntary statement can be admitted under section 117(5), although it was not volunteered in the first instance, on affirmative proof that that statement was both free and voluntary. The difficulty we apprehend is this: owing to the unhappy juxtaposition of section 116 and 117(5) it is extremely difficult and at the same time vitally important to distinguish between them. An accused person is most unlikely to be familiar with either of these provisions; he is unlikely to appreciate either his own rights or those of the Police when he is making a statement to them. If he understands the position at all he would doubtless be inclined to think that he is bound to answer questions put to him by the Police and would run the risk of getting into trouble if he does not answer them truthfully. That is likely to be his general impression and in point of effect it accords very closely to the situation he would be in if he were being interrogated under section 116.

It follows, therefore, that if the prosecution wish to put in evidence a statement made by an accused person as a statement made under section 117(5) the affirmative proof that it is free and voluntary must be of the highest possible standard — higher indeed than would be required in similar circumstances under English law which is unfettered by any such provisions as the Sarawak Criminal Procedure Code's section 116. The mere presentation of a signed caution, the mere statement in evidence by a Police witness "I cautioned him" or even "I explained to him" is not enough. The precise circumstances in which the statement was taken must be adduced in evidence. Before the statement is admitted by the Court the position must be carefully explained to the accused person and he must be invited to comment on the evidence, cross-examine as to it, and call evidence himself if necessary to determine this issue of whether or not his statement was really free and voluntary. It is obvious in this case that this was not done and that the Magistrate did not as a result have before him evidence sufficiently affirmative to say that these statements were free and voluntary within the meaning of the law in *Regina v. Thompson*[1] *supra.* Moreover, in view of the nature of section 116 the procedure of taking statements and all it entails, it is particularly important that no questions should be asked of an accused who is making a statement under section 117(5), save for the purpose of removing ambiguity or at most of guiding the accused to the subject on which he is making his statement, in which case the words of the question should be included in the statement.

We have already indicated our view that questions must have been put in this case — questions moreover which were clearly beyond this ambit. In short, it is our considered opinion that before a statement can be admitted under the provisions of the Criminal Procedure Code, section 117(5), the most exacting standards of proof as to its free and voluntary character are required. These standards are clearly lacking here, and these statements cannot therefore be admitted.

Without the statements, the evidence regarding the first appellant was that he was found on the platform under a mosquito net and on the same platform were two saucepans which were found to have prepared opium in them: the same applies to the second appellant. In our opinion, this was sufficient evidence to call upon both appellants for their defence. The first appellant gave evidence freely admitting that he had bought the opium and that they were cooking it in the saucepans.

In the opinion of this Court the Magistrate must inevitably have come to the same conclusion without the statement as to his guilt on the two counts. The Court therefore applies the proviso to section 4(1) of the Criminal Appeal Act, 1907, applicable in Sarawak as we have already indicated.

As to the second appellant his evidence was that he took part in the cooking operations: he claimed that he thought he was merely cooking a mixture of Koyoh and Poka which he believed was for medicinal purposes. He denies that he saw any opium being used in the preparations. In view of the proved fact that opium was being cooked in the two saucepans it is impossible to accept that he was ignorant of the presence of opium in the mixture which he was cooking. The Court is of opinion here that the Magistrate must inevitably have found him guilty and we again apply the same proviso. His appeal is, therefore, dismissed.

As regards the third appellant there was evidence before the Magistrate that when the Police arrived a man jumped off the platform where the first and second appellants were sleeping and where a quantity of prepared opium was actually found. This man ran off into the jungle and was not identified, but some thirty minutes later the third appellant emerged from the jungle after one of the other accused had shouted out for him, acting on the instructions of Abang Othman (P.W. 1) "to call back the escaped man."

The inference that the third appellant was the escaped man was a strong one and his mere presence in the jungle at that time was highly suspicious and in our view the Magistrate was justified in calling on him for his defence. The third appellant elected to give evidence and in the course of it admitted that he was the man who had jumped off the platform, and that he had for a day and half taken part in the cooking operations, although he denied that he had handled the actual vessels in which prepared opium was detected or that he knew that opium was in fact being prepared. In our view his case is indistinguishable from that of the second appellant, and again applying the proviso to section 4(1) of the Criminal Appeal Act, 1907, we dismiss his appeal against conviction.

With regard to the eighth appellant the only evidence regarding him is that he was on the launch. The Court is of the clear opinion that his conviction cannot be sustained and his appeal is allowed.

With regard to the sentences imposed on the first, second and third appellants, all were substantially reduced by Bodley J. on appeal. Bearing in mind the extreme gravity of the offences committed by the three appellants these sentences do not err in point of severity and we therefore order the same periods of imprisonment and fines as Bodley J.'s, that is to say: first appellant, two years' rigorous imprisonment and a fine of $4,000 (or in default a further nine months' rigorous imprisonment) on the first charge, and two years' rigorous imprisonment, to run concurrently, on the second charge; second appellant, eight months' rigorous imprisonment and a fine of $500 (or in default a further six months' imprisonment); third appellant, eight months' rigorous imprisonment and a fine of $1,000 (or in default a further six months' imprisonment). The prison sentences will run from the date of conviction before the Magistrate, making due allowances for the periods appellants have been released on bail, that is to say from the 12th March, 1955. The fine of $750 paid by the eighth appellant will be refunded to him.

Order accordingly.

Solicitors for the appellants: *Donaldson & Burkinshaw.*

Re KETUNA BIBI

[R. Cr. J. (Buhagiar J.) July 30, 1955]

[K. L. — Criminal Revision No. 13 of 1955]

Penal Code s. 406 — Criminal breach of trust — Whether a Muslim wife can commit criminal breach of trust of her husband's property — Muslim law.

In this case the accused was charged with criminal breach of trust of property belonging to her husband. At the trial after the evidence of the witnesses had been given, the learned Magistrate ruled that the charge was groundless, as he held that a wife has joint possession of her husband's property and cannot be charged with disposing of the property of her husband in any way.

Held: in Muslim law there is no community of interest between husband and wife and therefore it is possible for a Muslim wife to commit theft or criminal breach of trust of her husband's property.

Case referred to:—

(1) *R. v. Khatabai* (1869) 6 B.H.C.R. 9.

CRIMINAL REVISION.

J. P. Kirby (Federal Counsel) for the Public Prosecutor.

Respondent absent.

Cur. Adv. Vult.

Buhagiar J.: —Ketuna Bibi daughter of Noordin was charged in the Magistrate's Court, Kuala Kubu Bharu with an offence punishable under section 380 of the Penal Code. It was a case of theft in a dwelling house by a wife of property belonging to her husband. When the case came to be heard on the 31st March, 1955 the original charge was amended by the prosecution to one of criminal breach of trust, an offence punishable under section 406 of the Penal Code. The amended charge was explained to the defendant who claimed trial; the evidence of Abdulla Khan son of Noor Mohamed, a prosecution witness, was heard. On the application of the prosecution an adjournment was granted.

Proceedings were resumed on the 13th April, 1955, and before any further evidence was heard, the learned Magistrate ruled that the charge was groundless and discharged the defendant under section 173(g) of the Criminal Procedure Code, such discharge not amounting to an acquittal.

In his grounds of judgment the learned Magistrate stated that in making the said order he relied on the commentary to section 406 in *Ratanlal,* The Law of Crimes where in the 17th edition at page 998 the following passage appears: "A wife has joint possession of her husband's property and cannot, therefore, be indicted for disposing of it in any way. According to English law she can be convicted of larceny as a bailee."

The matter was brought to my attention by the Deputy Public Prosecutor. I decided to exercise the powers of revision in this case. The accused refused on two occasions to accept service of the date fixed for hearing although the contents and purport of the notice were explained to her; she did not appear on the date of the hearing; I considered that under section 325(ii) of the Criminal Procedure Code the accused had been given the opportunity of being heard in her own defence and proceeded with the hearing in her absence.